

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 12-O-10051-PEM
)	(12-O-15610;12-O-17168
PAUL RANDALL BARTLESON,)	13-O-11016); 12-O-14196 (Cons.)
)	
Member No. 119273,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

Introduction¹

Respondent Paul Randall Bartleson was charged, in four matters, with: (1) improperly withdrawing from representation; (2) fee splitting; (3) not responding promptly to client inquiries or informing them of significant developments; (4) violating probation conditions; (5) not performing competently; (6) conflicts; and (7) not returning unearned fees. He did not participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

² The rules in effect prior to July 1, 2014 apply. Accordingly, unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition asking the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 10, 1985, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 27, 2013, the State Bar properly served the NDCs on respondent by certified mail, return receipt requested, to his membership records address. A copy of each NDC was also sent to respondent by regular mail to his membership records address. The NDCs notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) All copies of the NDCs served by certified and regular mail were returned as undeliverable by the United States Postal Service.

Respondent had actual notice of this proceeding. On January 27, 2014, the deputy trial counsel (DTC) sent respondent an email to an address obtained from the State Bar Office of Probation. Respondent answered this email and requested copies of the NDCs, which were sent to him by email on January 27, 2014.

Respondent did not file a response to the NDCs.⁴ On February 4, 2014, the State Bar properly filed and served a motion for entry of default on respondent by certified mail, return receipt requested, and by regular mail to his membership records address. The motion complied

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

⁴ The NDCs were consolidated on February 3, 2014.

with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent (rule 5.80) and reflecting that respondent had actual notice of this proceeding. The motion also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on March 12, 2014. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 30, 2014, the State Bar properly filed and served the petition for disbarment on respondent by certified mail, return receipt requested, and by regular mail to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent had not contacted the State Bar since the entry of default; (2) there are no disciplinary matters pending against respondent; (3) respondent has one record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct, although there is one matter pending. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 18, 2015.

Respondent has one prior record of discipline.

Pursuant to a Supreme Court order filed on November 9, 2011, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years, on condition that he be suspended for 60 days. Respondent stipulated that he willfully

violated rule 4–200 (one count) of the State Bar Rules of Professional Conduct and Business and Professions Code section 6103 (one count).

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-O-10051 (The Fee Splitting Matter)

Count 1—respondent willfully violated rule 1-320(A) (sharing fees with non-lawyers) by sharing legal fees with non-lawyers Shane Barker and/or Jeff Pulino and/or commissioned sales representative employees from May through September 2010 in relation with respondent's contracted employment with US Legal Services (USLS).

Case Number 13-O-11016 (The Probation Violations Matter)

Count 2 – respondent willfully violated section 6068, subdivision (k) (not complying with disciplinary probation conditions) by not contacting the Office of Probation within 30 days from the effective date of discipline; not submitting four quarterly reports due on the tenth of April, July and October 2012 and April 2013; not attending six mental health sessions in 2012 or State Bar Ethics School by December 9, 2012; not responding to a request from the Office of Probation regarding his mental health reports; and not taking the Multistate Professional Responsibility Examination and providing proof of passage by December 9, 2012.

Case Number 12-O-17168 (The Burr Matter)

Count 3 – respondent willfully violated rule 3-110(A) (intentionally, recklessly, or repeatedly failing to perform legal services with competence) by filing a complaint with causes

of action that were time-barred, not properly pleaded and lacking in factual support and legal merit; by continuing to assert those causes of action in two amended complaints; and by not appearing at three case management conferences and two court hearings.

Count 4 – respondent willfully violated section 6068, subdivision (m) (not responding promptly to reasonable client inquiries) by not responding promptly to nine reasonable written status inquiries and numerous telephone calls and voicemail messages made by the Burrs in July and August 2010, that respondent received.

Count 5 – respondent willfully violated section 6068, subdivision (m) (not informing clients of significant developments) by not informing the Burrs of significant developments in the matter in which respondent had agreed to provide legal services, namely *Burr v. JPMorgan Chase*, including that the defendant filed demurrers to the complaint and first and second amended complaints, all of which the court sustained; that respondent filed a second amended complaint, a motion to be relieved as counsel and, later, an association of attorney; that the defendant filed a notice of entry of judgment; and that two hearings on intent to impose sanctions were held.

Count 6 – respondent willfully violated rule 3–700(D)(2) (not refunding unearned fees) by not refunding \$11,750.00 in unearned fees to the Burrs.

Count 7 – respondent willfully violated rule 3–310(B)(3) (avoiding representation of adverse interests, written disclosure) by not advising the Burrs in writing of his Memorandum of Understanding (MOU) with USLS and its terms, including his agreement not to interfere with USLS’ relationship with the Roes. In so doing, respondent accepted or continued representation of a client without providing written disclosure to the client that respondent has or had a business relationship with another person or entity he knew or reasonably should have known would be affected substantially by the resolution of the matter.

Case Number 12-O-15610 (The Roe Matter)

Count 8 – respondent willfully violated rule 3-110(A) (intentionally, recklessly, or repeatedly failing to perform legal services with competence) by filing a complaint with causes of action that were time–barred, not properly pleaded and lacking in factual support and legal merit; by continuing to assert those causes of action in two amended complaints; and by not opposing or timely opposing demurrers, motion to strike and an application for order to set aside entry of default.

Count 9 – respondent willfully violated section 6068, subdivision (m) (not responding promptly to reasonable client inquiries) by not promptly responding to two written and six telephonic reasonable status inquiries made by the Roes in June 2012 which respondent received regarding a matter in which respondent had agreed to provide legal services.

Count 10 – respondent willfully violated section 6068, subdivision (m) (not informing clients of significant developments) by not informing the Roes of significant developments in the matter in which respondent had agreed to provide legal services, namely *Roe v. Barrington Capital Corporation*, including that the defendant filed demurrers to the complaint and first and second amended complaints, all of which the court sustained, the last one without leave to amend; that respondent filed a second amended complaint and an association of attorney and associated another attorney in the case; and that an application to set aside entry of judgment had been filed.

Count 11 – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by not taking any action on the Roes’ behalf after the hearing on the second amended complaint on September 27, 2011; by not informing them that he was withdrawing from employment; and by not responding to their inquiries in June 2012.

Count 12 – respondent willfully violated rule 3–700(D)(2) by not refunding \$21,250.00 in unearned fees to the Roes.

Count 13 – respondent willfully violated rule 3–310(B)(3) by not advising the Roes in writing of his MOU with USLS and its terms, including his agreement not to interfere with USLS’ relationship with the Roes. In so doing, respondent accepted or continued representation of a client without providing written disclosure to the client that respondent has or had a business relationship with another person or entity he knew or reasonably should have known would be affected substantially by the resolution of the matter.

Case Number 12-O-14196 (The Stewart Matter)

Count 1 – count one fails to state a disciplinable offense. Rule 3-110(A) does not require that legal services be of value to a client. Neither value nor lack of value has anything to do with determining whether an attorney has intentionally, recklessly, or repeatedly failed to perform legal services competently in willful violation of rule 3-110(A). Accordingly, this count is dismissed with prejudice.

Count 2 – respondent willfully violated section 6068, subdivision (m) (not responding promptly to reasonable client inquiries) by not responding to more than 30 reasonable telephonic status inquiries made by his client and that respondent received between March 9, 2009 and February 2012 about a matter in which respondent had agreed to provide legal services.

Count 3– respondent willfully violated section 6068, subdivision (m) (not informing clients of significant developments) by not informing his client that he had not attended a meeting of creditors on April 18, 2012 in *In Re Regina Stewart*, case no. 12–24771, filed in the United States Bankruptcy Court for the Eastern District of California.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, and respondent had actual notice of this proceeding, as the State Bar (a) filed and properly served the NDCs on respondent by certified mail, return receipt requested, at his membership records address; and (b) on January 27, 2014, the DTC sent respondent an email to an address obtained from the State Bar Office of Probation. Respondent answered this email and requested copies of the NDCs, which were sent to him by email on January 27, 2014;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Paul Randall Bartleson be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

It is also recommended that respondent make restitution to the following clients:

1. To Christy and Todd Burr in the amount of \$1,750.00 plus 10 percent interest per year from November 1, 2010;

2. To Christy and Todd Burr in the amount of \$11,750.00 plus 10 percent interest per year from November 1, 2011; and
3. To Lisa and Edward Roe in the amount of \$21,250.00 plus 10 percent interest per year from June 1, 2012.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d)

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Paul Randall Bartleson, State Bar number 119273, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May ____, 2015

PAT McELROY
Judge of the State Bar Court